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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIUS VERNEEL DANIELS,

Defendant and Appellant.

H041386

(Santa Clara County

Super. Ct. No. C1474021)

Pursuant to a negotiated agreement, defendant Julius Verneel Daniels pleaded no contest to two counts of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c) – counts 1 and 4) and two counts of assault by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4) – counts 3 and 6). Defendant also admitted the following allegations: (1) he committed count 1 for the benefit of, at the direction of, and in association with a criminal street gang (Pen. Code, § 186.22, subd. (b)(1)(C)); and (2) count 4 was committed when defendant was a minor age 16 or older (Welf. & Inst. Code, § 707, subd. (d)(1)). The trial court suspended imposition of sentence and placed defendant on probation for three years. Defendant contends that the probation condition which excludes him from gang-related court proceedings is unconstitutionally overbroad. We affirm the order.

## **I. Statement of Facts**

On the evening of November 9, 2012, defendant and three accomplices saw the two minor victims walking through a park. Someone in defendant's group shouted, "408 Crips," and the group prevented the victims from passing. Defendant demanded that the victims empty their pockets. One of the victims (John Doe #1) handed over six dollars, a cell phone, and a debit card, while the other had nothing. After John Doe #1 refused to give the PIN number to his debit card, the group assaulted both victims. When the assaults ceased after a few minutes, defendant demanded that John Doe # 1 hand over his shoes. After the victim complied, the group left.

On January 19, 2014, defendant and another man approached Nick Harris and Cail McClenahen as they left a restaurant. Defendant demanded that they give him their money and Harris gave him \$50. Defendant tried to punch McClenahen, but missed. Before fleeing, defendant told the men that he was a "Southside Crip" and he "ran the hood." The victims called 911 and chased defendant and his companion. As undercover police officers were listening to the call, they saw two men running in front of them. The officers detained defendant. Harris and McClenahen identified defendant as the person who had robbed them.

## **II. Discussion**

Defendant contends that the probation condition which restricts him from attending court proceedings when known gang members are present is unconstitutionally overbroad.

Over defendant's objection that the condition was unconstitutional and "violated the principles of *People v. Lent*,"<sup>1</sup> the trial court imposed the following condition: "You shall not be present at any court proceeding where you know or the probation officer

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<sup>1</sup> *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).

informs you that a member of a criminal street gang is present or that the proceeding concerns a member of a criminal street gang unless you are a party, a defendant in a criminal action or you are subpoenaed as a witness or you have the prior permission of the probation officer.”

A probation condition that restricts a probationer’s exercise of his or her constitutional rights is permissible if ““necessary to serve the dual purpose of rehabilitation and public safety.”” (*People v. Peck* (1996) 52 Cal.App.4th 351, 362.) “However, probation conditions that restrict constitutional rights must be carefully tailored and ‘reasonably related to the compelling state interest’ in reforming and rehabilitating the defendant. [Citations.]” (*People v. Jungers* (2005) 127 Cal.App.4th 698, 704.)

Under the overbreadth doctrine, ““a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.”” [Citations.]” (*In re Englebrecht* (1998) 67 Cal.App.4th 486, 497.) “‘A law’s overbreadth represents the failure of draftsmen to focus narrowly on tangible harms sought to be avoided, with the result that in some applications the law burdens activity which does not raise a sufficiently high probability of harm to governmental interests to justify the interference.’ [Citation.]” (*Ibid.*)

As one reviewing court observed, “courthouses are ‘known gang gathering areas’ and the restriction on court attendance is aimed at preventing the gathering of gang members to intimidate witnesses at court proceedings. [Citation.]” (*People v. Martinez* (2014) 226 Cal.App.4th 759, 766.) “[T]he state’s ability to afford protection to witnesses whose testimony is crucial to the conduct of criminal proceedings is an absolutely essential element of the criminal justice system.” (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1149-1150 & fn. 15.)

However, a broad ban on attendance at court proceedings may impinge upon an individual's constitutional rights. The public has a right of access to criminal and civil trials. (See *Globe Newspaper Co. v. Superior Court* (1982) 457 U.S. 596, 603 [acknowledging right of access to criminal trials]; *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1212 [the constitutional right of access extends to civil trials].) Exercise of the right is essential to freedom of speech and to freedom of the press. (See *Richmond Newspapers, Inc. v. Virginia* (1980) 448 U.S. 555, 577-580.)

In *People v. Leon* (2010) 181 Cal.App.4th 943, this court considered constitutional challenges to a probation condition that prohibited the defendant from “‘appear[ing] at any court proceeding unless’” he was “‘a party, . . . a defendant in a criminal action, subpoenaed as a witness, or [attended] with permission of probation’” on the grounds that the condition was unconstitutionally overbroad and vague. (*Id.* at p. 952.) *Leon* noted that “[t]here can be a variety of legitimate reasons for being at a court proceeding, other than to intimidate or threaten a party or witness. For example, a defendant may need to file a document regarding a family matter or he may, as a member of the public, wish to observe a newsworthy trial not involving a gang member or himself.” (*Id.* at p. 953.) *Leon* also concluded that the clause allowing for attendance with the probation officer's permission did not rectify the impermissibly “broad sweep” of the condition. (*Ibid.*) Thus, this court modified the condition. (*Id.* at p. 954.) The condition in the present case is identical to the modified condition that we approved in *Leon*.

In our view, defendant's First Amendment right to attend court proceedings is largely preserved by the challenged condition. First, the vast majority of court proceedings do not involve gang members and defendant is free to attend any court proceeding in which no known gang member is present. Second, he can participate in or attend a court proceeding in which a gang member is present if he is a party or a defendant in a criminal action. Third, in cases involving known gang members in which

defendant or a family member is a victim of a crime, or he wishes to testify voluntarily, or he wants to address the court at a sentencing hearing, defendant need only seek the prior permission of his probation officer to attend the court proceeding. Thus, the condition is narrowly drawn to preserve defendant's constitutional rights and reasonably related to the compelling state interests of rehabilitating defendant by limiting his gang affiliation and of preventing witness intimidation at court proceedings.

Defendant, however, relies on *In re E.O.* (2010) 188 Cal.App.4th 1149 (*E.O.*), in which another panel of this court held that a probation condition which directed the minor to “‘not knowingly come within 25 feet of a Courthouse when the minor knows there are criminal or juvenile proceedings occurring which involves [*sic*] anyone the minor knows to be a gang member or where the minor knows a witness or victim of gang-related activity will be present, unless the minor is a party in the action or subpoenaed as a witness or needs access to the area for a legitimate purpose or has prior permission from his Probation Officer’” was unconstitutionally overbroad. (*Id.* at pp. 1152, 1157.) *E.O.* observed that the condition would “prevent him from testifying voluntarily or addressing the court in a setting, such as a sentencing hearing, where comments from members of the public might be received.” (*Id.* at p. 1155.) *E.O.* modified the judgment by striking the condition and allowing either party to request a new disposition hearing within 30 days of the issuance of the remittitur. (*Id.* at p. 1158.) *E.O.* is distinguishable from the present case. Here, defendant is not barred from entering a courthouse where a known gang member is present, let alone restricted from being within 25 feet of such a courthouse.

Defendant also argues that, as in *E.O.*, there was no evidence or information presented that he loitered on courthouse property, threatened or would threaten witnesses, or that his presence would incite violence in a courthouse.

A trial court has broad discretion when it determines which probation conditions should be imposed. (*People v. Welch* (1993) 5 Cal.4th 228, 233.) Thus, we review the trial court's imposition of probation conditions for abuse of discretion. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1121.) "A condition of probation will not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .' [Citation.] [Fn. omitted.] Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*Lent, supra*, 15 Cal.3d at p. 486.) "The [*Lent*] test is clearly in the conjunctive, that is, the three factors must all be found to be present in order to invalidate a condition of probation." (*People v. Balestra* (1999) 76 Cal.App.4th 57, 65, fn. 3.)

Here, defendant admitted that he committed one of the robberies for the benefit of a criminal street gang, thus establishing his affiliation with a gang. Since restricting defendant's attendance at court proceedings involving known gang members is reasonably related to the crime for which he was convicted, the trial court did not abuse its discretion.

### **III. Disposition**

The order is affirmed.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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Márquez, J.